

ASSEMBLY

20 May 2015

Title: Council Constitution - Updates	
Report of the Cabinet Member for Central Services	
Open Report	For Information
Wards Affected: None	Key Decision: No
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Accountable Director: Chris Naylor, Chief Executive	
Summary <p>The Assembly adopted the new Council Constitution at its meeting on 25 November 2014 (Minute 27) and approved several changes at its last meeting on 24 February 2015 (Minute 58). This report presents some further changes which have arisen from new legislative requirements, the establishment of the new Pension Board from 1 April 2015 and the correction of some errors / omissions during the drafting of the new Constitution.</p> <p>The main changes relate to the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into force on 11 May 2015. These regulations are intended to simplify, as well as localise, the disciplinary process for the three statutory officer posts of Head of Paid Service, Monitoring Officer and Chief Finance Officer.</p> <p>Attached at Appendix 1 is the full schedule of updates to the Constitution. The nature of the changes are such that they do not require the Assembly's approval and have been agreed for implementation by the Monitoring Officer under the revision arrangements set out in paragraph 2 of Part 7 of the Constitution. That said, there are some noteworthy implications in relation to the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.</p>	
Recommendation(s) <p>The Assembly is recommended to:</p> <ul style="list-style-type: none">(i) Note the revised arrangements in respect of the proposed dismissal of the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer, in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015; and(ii) Note the schedule of updates to the Constitution as set out in Appendix 1 to the report.	

Reason(s)

To appraise Members with details of legislative changes and to accord with the requirements of Part 7 of the Council Constitution.

1. Introduction and Background

- 1.1 A new Council Constitution was adopted by the Assembly at its meeting on 25 November 2014 (Minute 27 refers).
- 1.2 Paragraph 2 of Part 7 of the Constitution establishes the rules for making amendments to the Constitution. In summary, the Assembly is responsible for approving all changes except for the following which may be implemented by the Monitoring Officer:
- changes to give effect to any decisions of the Council;
 - changes in the law;
 - minor amendments such as to correct errors; and
 - to ensure that the Constitution is maintained up-to-date.
- 1.3 The Constitution is kept under continual review by officers within the Legal and Democratic Services division. A number of amendments to the Constitution were approved at the meeting of the Assembly on 24 February 2015 and this report presents a number of further changes which are required.

2. Proposal and Issues

- 2.1 The Constitution updates at **Appendix 1** relate to three main aspects:
- (i) the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015;
 - (ii) the new Pension Board arrangements;
 - (iii) the correction of the Chief Executive's statutory roles in respect of elections.
- 2.2 With regard to (ii) above, the Assembly considered and approved proposals for the creation of a new Pension Board at its meeting on 24 February 2015 (Minute 55 refers). The new Board became effective from 1 April 2015 and it is appropriate to include reference to it in the Constitution. Although the new Pension Board is a separate entity to the Council's Pensions Panel, it has been included within that section of the Constitution (Part 2, Chapter 11) for ease of reference.
- 2.3 In relation to (iii) above, an error and an omission were identified in relation to the Chief Executive's position as Returning Officer for Local Elections and as Acting Returning Officer for Parliamentary Elections.
- 2.4 The significant changes relate to (i) above and the implications of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. All local authorities are required to set out procedures relating to staff and the legal basis is established via Sections 8 and 20 of the Local Government Housing and Land Act 1989 and the Local Authorities Standing Orders Regulations 2001.
- 2.5 Local authorities are required to appoint the following statutory officers:

- **Head of Paid Service** - Section 4 of the 1989 Act requires the Council to designate one of its officers as the “Head of Paid Service” (the Chief Executive);
- **Monitoring Officer** - Section 5 of the 1989 Act requires the Council to designate one of its officers as the “Monitoring Officer” (the Head of Legal and Democratic Services);
- **Chief Finance Officer** - Section 151 of the Local Government Act 1972 requires the Council to have an officer with responsibility for financial administration (the Chief Finance Officer).

- 2.6 Under the 2001 Standing Orders Regulations, a degree of statutory protection was provided for the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer in view of their statutory responsibilities and the fact that they are carried out in a political environment. The statutory protection required the appointment of a Designated Independent Person (DIP) to investigate any allegation of misconduct against those officers. The DIP was to be appointed early in the procedure, when it appeared that an allegation of misconduct by the relevant officer needed to be investigated. No disciplinary action could be taken other than in accordance with a recommendation in a report made by a DIP. The intention of that measure was to ensure that the officers could discharge their duties without any fear of being influenced by elected members and being dismissed without good reason.
- 2.7 In recent years the Secretary of State for Communities and Local Government had expressed concern that the DIP process was, in practice, complex and expensive in that it placed Councils as the employer at a great disadvantage in comparison to the position of the employee, particularly given that the recommendation of the DIP had to be followed. In addition, where there were disciplinary actions against those senior officers, there had been some suggestion that Councils may have preferred to negotiate severance payments rather than go through the formal DIP process.
- 2.8 As a result the Secretary of State issued new amending Standing Order Regulations in March 2015 aimed at simplifying, as well as localising, the disciplinary process for the three statutory officers through the abolition of the requirement that a DIP should be appointed. In place of the DIP process, a decision to dismiss any of the statutory officers must now be taken by the full Council, who must consider any advice, views or recommendations from a panel of Members that includes at least two independent persons appointed under Section 28(7) of the Localism Act 2011 (the Council currently has three Independent Persons).
- 2.9 In summary, the new requirements do not impact greatly on this Council’s existing arrangements for disciplinary arrangements against the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer. The Assembly established the JNC Disciplinary Panel several years ago and that body would continue to fulfil the requirements of the new Regulations. The membership and terms of reference of that Panel (Part 2, Chapter 4 of the Constitution) need to reflect the cessation of the DIP role and the inclusion of two Independent Persons while administrative changes are also required to the Employment Procedure Rules (Part 4, Chapter 3) to reflect that the JNC Disciplinary Panel now replaces the role of the DIP.
- 2.10 The two Localism Independent persons would be able to take part and vote on the JNC Panel’s recommendations, but the Panel would not be required to accord any

special weight to their views or opinions, unlike the previous arrangements whereby the recommendation of the DIP had to be followed.

- 2.11 Under the new regime, the Assembly will, before taking a vote on whether or not to approve a dismissal, need to take account of any advice views or recommendations of the JNC Panel, any conclusions of any investigation and any representations from the relevant officer(s) subject to the report. It will be free to make its own decision on the merits of the case as it sees it and not be bound by the view of a third party.

3. Options Appraisal

- 3.1 The primary changes are a mandatory legal requirement and there are no alternative options.

4. Consultation

- 4.1 The proposals have been discussed with relevant Members and officers via the report clearance processes.

5. Financial Implications

Implications completed by: Olufunke Johnson, Principal Accountant

- 5.1 There are no financial implications associated with the measures outlined in this report.

6. Legal Implications

Implications completed by: Paul Feild, Senior Governance Solicitor

- 6.1 The Local Government Act 2000 requires Councils to produce, maintain and review the Constitution document which sets out the rules, codes, protocols and schemes by which the Council operates. The body of this report sets out the legal framework and, as explained, the Council is legally required to implement the changes.

7. Other Implications

- 7.1 **Risk Management** - The Council has a duty to comply with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. Prompt action to implement the changes is a hallmark of sound administration.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1** – Schedule of Amendments approved by the Monitoring Officer (May 2015)